

O 221223Z NOV 08
FM USMISSION GENEVA
TO SECSTATE WASHDC IMMEDIATE 7591
CIA WASHINGTON DC IMMEDIATE
DIA WASHINGTON DC IMMEDIATE
JOINT STAFF WASHINGTON DC IMMEDIATE
NATIONAL SECURITY COUNCIL WASHINGTON DC IMMEDIATE
SECDEF WASHINGTON DC IMMEDIATE
USMISSION USNATO IMMEDIATE
DEPT OF ENERGY WASHINGTON DC IMMEDIATE
DTRA ALEX WASHINGTON DC IMMEDIATE
DTRA-OSES DARMSTADT GE IMMEDIATE
CNO WASHINGTON DC IMMEDIATE
DIRSSP WASHINGTON DC IMMEDIATE
INFO AMEMBASSY ASTANA PRIORITY
AMEMBASSY KYIV PRIORITY
AMEMBASSY MOSCOW PRIORITY

S E C R E T GENEVA 001018

DEPT FOR T, VCI AND EUR/PRA
DOE FOR NNSA/NA-24
CIA FOR WINPAC
JCS FOR J5/DDGSA
SECDEF FOR OSD(P)/STRATCAP
NAVY FOR CNO-N5JA AND DIRSSP
AIRFORCE FOR HQ USAF/ASX AND ASXP
DTRA FOR OP-OS OP-OSA AND DIRECTOR
NSC FOR HAYES
DIA FOR LEA

E.O. 12958: DECL: 07/17/2018

TAGS: [KACT](#) [PARM](#) [START](#) [JCIC](#) [INF](#) [US](#) [RS](#) [UP](#) [BO](#) [KZ](#)

SUBJECT: JCIC-XXXIII: LAWYERS, MEETING ON ARTICLE XVII AND DRAFT JCIC AGREEMENT ON CESSATION OF CONTINUOUS MONITORING, NOVEMBER 19, 2008 (U)

REF: GENEVA XXXX (JCIC-XXXIII-014)

Classified By: Jerry A. Taylor, United States Representative to the Joint Compliance and Inspection Commission.
Reasons: 1.5(b) and (d).

11. (U) This is JCIC-XXXIII-019.

12. (U) Meeting Date: November 19, 2008
Time: 3:30 P.M. - 5:00 P.M.
Place: U.S. Mission, Geneva

SUMMARY

13. (S) U.S. and Russian lawyers met to discuss Russian legal requirements if the decision were made to extend START for a 5-year period pursuant to Paragraph 2 of Article XVII. Unlike the case for the United States, which does not require Senate advice and consent for such an extension, a proposed law on ratification of the extension must be submitted to the Duma and approved before the extension could enter into force. Given the procedural requirements of submitting the law to the Duma, extension of START could be delayed unless other measures, such as "provisional application," were deemed legally sufficient to cover any intervening period. In any event, these requirements need to be taken into account as the Russian MFA determines when to submit the proposed law to the Duma. The lawyers also discussed likely proposed changes to the U.S. draft JCIC Agreement on Completion of Continuous Monitoring Activities. The changes will be provided by the Russian side through diplomatic channels.

End Summary.

14. (S) Brown asked Kotkova for an explanation of what she had said to Miller (REFTEL) about the need for the Duma to

ratify the Parties' agreement to extend START, if such a decision were made. She confirmed that, in accordance with 1995 Russian legislation on international treaties, the Duma is responsible for reviewing and approving any agreement, even an executive agreement, that would have the effect of extending START, and she understood that an equivalent process on the part of the U.S. side would not be necessary. She explained that the Russian legal interpretation was that the Duma, by approving the START Treaty which included a provision permitting 5-year extensions, had not/not authorized such extensions of the Treaty without further action of the Duma. She said that the Russian legislation for ratification of treaties provided for a 6-month period for the Duma to consider a proposed action, which in this case would be in the form of a law on ratification of the extension, but that on an expedited basis it might be possible to finish that process in about 2 weeks.

¶5. (S) Kotkova cautioned, however, that the process of obtaining approval for CTR extension had dragged out much longer, requiring the government to submit the proposed extension law several times, during more than one 6-month period. In such a case, however, she noted that the CTR agreement had been "provisionally applied" so that there was no gap in its application, and she raised the issue of whether this might be a way to ensure that START did not expire if Duma approval was not obtained in time. Brown cautioned that provisional application might not be adequate to constitute an effective extension of START, in particular with regard to privileges and immunities, but he indicated that this was a subject that required further legal analysis if it appeared that provisional application might be seriously under consideration in a contingency plan, and he stated that this could be the topic of further discussion between the lawyers at a subsequent session.

¶6. (S) Kotkova also noted the complexity of possible post-START scenarios if, following a decision to extend START, START parties other than the United States and Russia insisted on the continuation of START even after START had been superseded, with respect to the United States and Russia, by a post-START agreement. She indicated that she was planning to research these and other scenarios, some of which she believed might have useful precedents in agreements between the USSR and Yugoslavia that had been subsequently superseded. Brown stated that he would also look into some of the scenarios she had described to identify relevant U.S. practice and approach.

¶7. (S) Kotkova then previewed a number of likely changes to the draft JCIC Agreement on Completion of Continuous Monitoring that Russia would be providing to the United States through diplomatic channels several weeks after the end of the JCIC session. She noted that the overall assessment of the U.S. draft agreement and the two exchanges of letters was very high among Russian experts and that the changes would be relatively minor. She also stated that there were no concerns on the part of Russia that, even after START expiration, letters signed by JCIC representatives would continue to be in effect, as long as, by their terms, those letters were not limited in duration to START duration.

She explained that the JCIC representatives would be considered to be duly authorized to sign on behalf of their respective governments. Brown indicated that this was his understanding as well and that there should be no need for the parties to produce "full powers."

¶8. The more significant changes to the U.S.-proposed texts previewed by Kotkova were:

- The term "monitored facility" should be used throughout the text rather than "perimeter continuous monitoring area" because some of the items mentioned in the draft agreement were located outside the perimeter continuous monitoring area and therefore the broader term, "monitored facility," was more accurate.

- Belarus was insisting that all vehicles carrying equipment

and supplies must complete transit through Belarus before START expiration or supersession, which would require a drafting change to Section I, paragraph (c) of the draft agreement.

- Russia would be proposing the use of another airport for inspection aircraft (Section II, paragraph 2(c)), based on (unspecified) issues at the airport associated with the monitored facility.

- Russia was prepared to allow requests for packing materials to be handled on site between the in-country escort and the monitoring team leader rather than through a 60-day advance notification process (Section II, paragraph 2(a)).

- The terms "conveyed" and "transferred" would be translated by a single Russian word, so it would be better if the English text used a single word in this context as well. Brown expressed his view that the term "conveyed" should be able to be used in both contexts in English and agreed to take this view back to the U.S. delegation.

- In the proposed exchange of letters on settlement of accounts, the separate references to Annex 14 and Annex 16 in the second paragraph could be simplified to a single reference to both, because Annex 16 does not "modify" Annex 14, as stated in the U.S. text.

¶8. (U) Documents exchanged: None

¶9. (U) Participants:

U.S.

Mr. Brown

RUSSIA

Ms. Kotkova

¶10. (U) Taylor sends.
TICHENOR

NNNN

End Cable Text